

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**  
**JAVELL FOX,**

**Plaintiff,**

**9:20-cv-797  
(GLS/ML)**

**v.**

**C.O. ANDREJ L. GIFFORD,**

**Defendant.**

**APPEARANCES:**

**OF COUNSEL:**

**FOR THE PLAINTIFF:**

Javell Fox  
Pro Se  
12-B-1626  
Walkill Correctional Facility  
Box G  
Walkill, NY 12589

**FOR THE DEFENDANT:**

HON. LETITIA JAMES  
New York State Attorney General  
The Capitol  
Albany, NY 12224

PETER A. McDANIEL  
Assistant Attorney General

**Gary L. Sharpe**  
**Senior District Judge**

**ORDER**

The above-captioned matter comes to this court following a Report-Recommendation (R&R) by Magistrate Judge Miroslav Lovric, duly filed February 16, 2023. (Dkt. No. 57.) Following fourteen days from the service thereof, the Clerk has sent the file, including any and all objections filed by the

parties herein.

No objections having been filed, and the court having reviewed the R&R for clear error, it is hereby

**ORDERED** that the Report-Recommendation (Dkt. No. 57) is **ADOPTED** in its entirety; and it is further

**ORDERED** that defendant's motion for summary judgment (Dkt. No. 33) is **DENIED**; and it is further

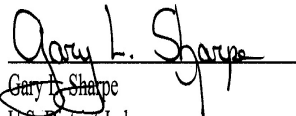
**ORDERED** that an exhaustion hearing pursuant to *Messa v. Goord*, 652 F.3d 305 (2d Cir. 2011) will be scheduled in due course to determine whether plaintiff properly exhausted his administrative remedies; and it is further

**ORDERED** that the matter is referred to Magistrate Judge Miroslav Lovric to conduct the aforementioned exhaustion hearing and prepare a report-recommendation; and it is further

**ORDERED** that the Clerk provide a copy of this Order to the parties in accordance with the Local Rules of Practice.

**IT IS SO ORDERED.**

March 8, 2023  
Albany, New York

  
Gary L. Sharpe  
U.S. District Judge